

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,**

**No. 27404-7-III**

**Respondent,**

**Division Three**

**v.**

**RONALD LYNDSEY BUTLER,**

**UNPUBLISHED OPINION**

**Appellant.**

Schultheis, C.J. — Ronald Butler appeals his convictions of two counts of unlawful delivery of a controlled substance within 1,000 feet of a school bus stop. He contends his Sixth Amendment right to trial was violated because the evidence considered by the trial court during a stipulated facts trial was insufficient to support the convictions. Mr. Butler raises additional issues in his statement of additional grounds. We affirm.

**FACTS**

On August 28, 2008, the State charged Mr. Butler by amended information with two counts of unlawful delivery of a controlled substance within 1,000 feet of a school bus stop. Following adverse pretrial rulings, Mr. Butler waived his right to a jury trial.

The court inquired of Mr. Butler:

THE COURT: And, do you also understand, sir, that a stipulated facts bench trial means that Mr. Dickerson [deputy prosecutor] and Mr. Sonderman [defense counsel], based upon the police reports, will agree to facts – in other words, what happened – and present those facts to me for a ruling by me on whether you are, in fact, guilty of the crimes as charged? Do you understand that sir?

DEFENDANT BUTLER: Completely.

THE COURT: . . . [F]or purposes of the trial, the trial will be submitted to me essentially on paper with facts that have been agreed to by your lawyer, Mr. Sonderman, and by the deputy prosecutor . . . Do you understand that, sir?

DEFENDANT BUTLER: Yes, Ma'am.

Report of Proceedings (Aug. 28, 2008) at 19-20.

Mr. Butler proceeded to trial on stipulated facts. The agreed findings of fact are summarized as follows. On September 9, 2007, the Tri-City Metro Drug Task Force (Task Force) met with a confidential informant (CI) who had arranged to purchase methamphetamine from Mr. Butler. The CI was searched and found to be free of any drugs or contraband. The CI drove to Mr. Butler's residence, entered through the front door, and exited about three minutes later. Upon return, the CI provided detectives with a bag of methamphetamine. The CI told detectives that she was let into the house where Mr. Butler weighed the methamphetamine and gave it to her in exchange for the prerecorded buy money.

The stipulated facts also stated that on October 4 the Task Force met with the CI,

who again arranged to buy methamphetamine from Mr. Butler. The CI was searched before the buy and given prerecorded buy funds. The CI told detectives that she arrived at Mr. Butler's residence where Mr. Butler gave her a bag of methamphetamine in exchange for the buy money.

Finally, the stipulated facts provided that on October 12 Task Force detectives searched Mr. Butler's house. Mr. Butler was in his bedroom where detectives found methamphetamine, packaging materials, a digital scale, and items of dominion for Mr. Butler. After advisement of rights, Mr. Butler admitted that he sold methamphetamine. A school bus stop was located within 627 feet of Mr. Butler's residence.

In addition to the stipulated facts, the court reviewed exhibits, which consisted of the items found in Mr. Butler's home—the scale, bags of methamphetamine, packaging materials, a photograph of Mr. Butler, and items showing dominion. Based on the stipulated facts and exhibits, the trial court entered guilty verdicts on the two counts of unlawful delivery.

### ANALYSIS

Mr. Butler argues that he was denied his right to a fair trial because the evidence considered by the trial court during the stipulated facts trial was insufficient to support his convictions. Evidence is sufficient to support a conviction if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v.*

*Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). “[W]hen the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). “In a stipulated facts trial, the judge or jury still determines the defendant’s guilt or innocence; the State must prove beyond a reasonable doubt the defendant’s guilt; and the defendant . . . by the stipulation, agrees that what the State presents . . . the witnesses would say.” *State v. Johnson*, 104 Wn.2d 338, 342, 705 P.2d 773 (1985).

To prove unlawful delivery of a controlled substance, the State must establish beyond a reasonable doubt that Mr. Butler delivered a controlled substance with knowledge that the substance delivered was a controlled substance. RCW 69.50.401(1). Methamphetamine is a controlled substance. RCW 69.50.206(d)(2).

Mr. Butler specifically argues that the evidence is insufficient to support the trial court’s findings of fact, pointing out that “the court did not examine any evidence, apart from the physical exhibits consisting of bags of methamphetamine, scales,<sup>[1]</sup> plastic bags, and Mr. Butler’s personal documents, a photograph of Mr. Butler, a list of school bus stops and an aerial photograph of Mr. Butler’s residence.” Br. of Appellant at 5-6. He also points out that “[n]either counsel presented any additional stipulated evidence or

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<sup>1</sup> We note that one scale was found in Mr. Butler’s residence.

statements that would support [the court's] findings.” *Id.* at 6.

Mr. Butler's argument is puzzling. The court was not required to consider evidence in addition to the exhibits and the stipulated facts. Both contain ample evidence of Mr. Butler's guilt. The items retrieved from Mr. Butler's home pursuant to the search warrant established that Mr. Butler lived at the residence where the contraband was seized. And the packaging materials and scale support an inference of intent to deliver. *See State v. Harris*, 14 Wn. App. 414, 418, 542 P.2d 122 (1975) (possession of five bags of marijuana and a scale evidenced intent to deliver); *State v. Simpson*, 22 Wn. App. 572, 590 P.2d 1276 (1979) (possession of cocaine, uncut heroin, lactose for cutting, and packaging materials supported an inference of intent to deliver).

Further, the stipulated facts, detailed above, support the convictions. Mr. Butler's argument ignores that a stipulation is an ““express waiver . . . conceding for the purposes of the trial the truth of some alleged fact, with the effect that one party *need offer no evidence to prove it* and the other is not allowed to disprove it.”” *State v. Wolf*, 134 Wn. App. 196, 199, 139 P.3d 414 (2006) (emphasis added) (alteration in original) (internal quotation marks omitted) (quoting *Key Design, Inc. v. Moser*, 138 Wn.2d 875, 893-94, 983 P.2d 653, 993 P.2d 900 (1999)). Juries are instructed to “accept as true” stipulated facts. *See* 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 4.77 (3d ed. 2008) (WPIC).<sup>2</sup> Accordingly, Mr. Butler's assertion that the evidence is

insufficient to support the trial court’s findings of fact is without merit—a stipulation of fact obviates the need for proof of that fact.

We reject Mr. Butler’s contention that his trial was constitutionally infirm. The stipulated facts and exhibits amply support Mr. Butler’s convictions.

*Statement of Additional Grounds*

Mr. Butler raises six issues in his statement of additional grounds for review. None of them warrant relief. Mr. Butler contends that (1) his stepdaughter was questioned by police without his consent, (2) defense counsel was inadequate because he was unavailable for two court appearances and difficult to contact, (3) the digital scale recovered from Mr. Butler’s bedroom was used for weighing gold, not illicit drugs, (4) one finding of fact incorrectly stated the date of a delivery, (5) another finding of fact incorrectly stated that Mr. Butler told a detective that he sold methamphetamine, and (6) the court erred in disallowing evidence of the CI’s history of smuggling drugs into the Benton County jail.

Mr. Butler does not explain the alleged errors. He fails to reference the record or cite any case law to support his additional challenges to his convictions. While a statement of additional grounds for review need not reference the record or legal

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<sup>2</sup> WPIC 4.77 provides: “The parties have agreed that certain facts are true. You must accept as true the following facts.”

citations, it will not be considered “if it does not inform the court of the nature and occurrence of alleged errors.” RAP 10.10(c). Further, we are not required to search the record to find support for the defendant’s claim. RAP 10.10(c). Mr. Butler’s grounds are not sufficiently developed for review and therefore we are unable to consider them.

Nevertheless, we make the following points. Mr. Butler’s first two additional grounds reference matters outside the record and therefore are more appropriately raised in a personal restraint petition. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

Next, Mr. Butler challenges the factual accuracy of certain findings of fact in additional grounds 3, 4, and 5. However, he stipulated to the dates of the deliveries, that the scale was used to weigh methamphetamine, and that he told a detective that he sold methamphetamine. He is bound by those stipulations and cannot now retract them.

Finally, in additional ground 6, Mr. Butler argues the trial court erred in denying a pretrial motion to admit the CI’s criminal history. Even assuming the trial court erred, the error is harmless. The evidence, independent of the CI’s information, was sufficient to support the guilty verdicts.

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the

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Washington Appellate Reports but it will be filed for public record pursuant to RCW

2.06.040.

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Schultheis, C.J.

WE CONCUR:

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Sweeney, J.

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Kulik, J.